IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

CRL.A.No. 858 of 1999()

AGAINST THE JUDGMENT IN CRA.122/1999 of V ADDL.SESSIONS COURT, ERNAKULAM , DT.08.06.98 IN CC.328/94 OF THE JUDICIAL 1ST CLASS MAGISTRATE COURT I, ERNAKULAM, DT. 5.12.97.

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APPELLANT: RESPONDENT / COMPLAINANT

T.S.SOMASUNDARAN, THACHUKUDIYIL HOUSE,
EDAKKATTUVAYAL, P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.M.S.MANIKANDAN

RESPONDENTS: APPELLANT/ ACCUSED

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1. **M.SIVADASAN , NIKARTHIL HOUSE,**
   KULAYATTIKKARA P.O.

2. **STATE REP.BY THE PUBLIC PROSECUTOR,**
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.858 OF 1999

Dated 28th February, 2007

JUDGMENT

This appeal is filed against an order of acquittal. Even though notice was ordered on 7.12.1999, notice was not served so far and no effective steps were taken. Without notice to the accused, no interference can be made by this court.

2. I have considered the merits of the matter also. The appellant filed a complaint under section 138 of the Negotiable Instruments Act stating that a cheque issued by the first respondent for Rs.10,000/= was dishonoured for insufficiency of funds. The appellate court after considering the entire evidence found that there is no evidence to show that the cheque was issued for a legally enforceable liability. The appellate court also found that the presumption under section 138 of the Negotiable Instruments Act was rebutted. It is further found that the amount was borrowed in 1991 and the cheque was obtained only on 5.6.1994. PW1, though examined in court, was unable to say the exact date when the amount was borrowed. The

appellant was not able to prove that the cheque was issued in discharge of a legally enforceable debt and the above view expressed by the appellate court is a possible view. In this connection, I refer to the decision of the Apex Court in **M.S.Narayana Menon** v. **State of Kerala** (2006 (3) KLT 404 (SC)). No grounds are made out by the appellant to interfere in the order of acquittal.

The appeal is dismissed.

J.B.KOSHY
Judge

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